

EXHIBIT U

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February 19, 2008

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VIA EMAIL AND HAND DELIVERY

Hon. Charles A. Legge (Ret.)
JAMS
Two Embarcadero Center, Suite 1500
San Francisco, CA 94111

Re: Oracle Corporation, et al. v. SAP AG, et al.
Defendants' Motion to Compel No. 2
Hearing Date: March 4, 2008 at 9:00 AM

Dear Judge Legge:

Defendant TommorowNow, Inc. ("TN") submits this as its second motion to compel.¹

I. INTRODUCTION

This motion asks the Court to compel discovery relating to four subjects. First, it seeks discovery of Oracle's knowledge of the dissemination of its alleged intellectual property and the measures, if any, it has taken to protect that property (Section II.A). Second, it seeks discovery of Oracle's communications with TN employees, including, but not limited to, evidence that Oracle knew or should have known about TN's practices and consented thereto (Section II.B). Third, it seeks discovery of complaints from Oracle's customers as relevant to, among other issues, the real reasons Oracle loses customers (Section II.C). Finally, it seeks production of Oracle's Change Assistant software, which is a search engine that operates with Oracle's Customer Connection website (Section II.D).

Oracle's claims require proof that the information TN downloaded from Oracle's Customer Connection website, and thereby allegedly "stole" was, in fact, properly protected intellectual property that TN was not authorized to possess or use.²

¹ Defendant requests an in-person hearing and will arrange for a court reporter.

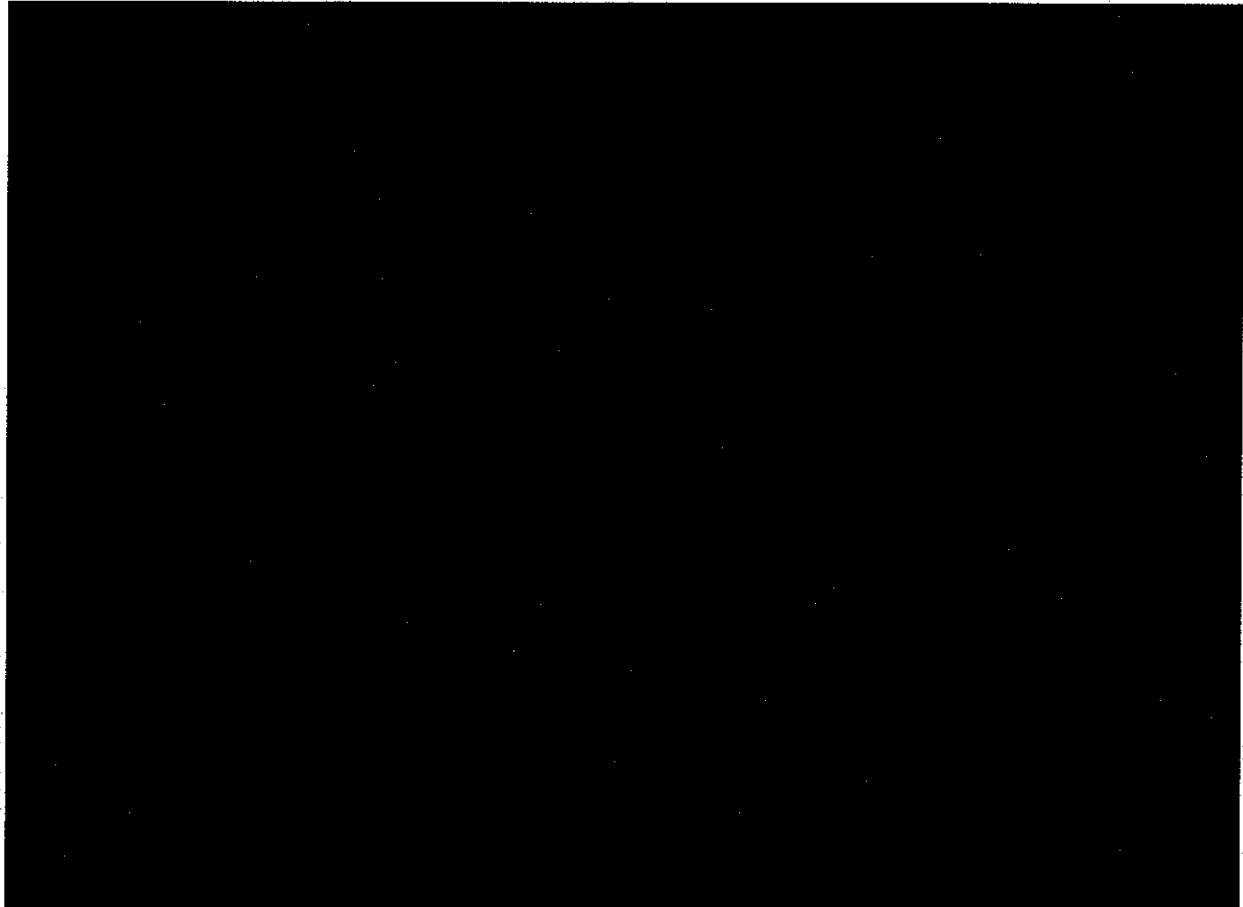
² See, e.g., First Amended Complaint ("FAC") at ¶ 103 (TN allegedly infringed copyright because it was "not authorized to copy, download, reproduce..." Oracle's software); *Thurmond v. Compaq Computer Corp.*, 171 F.Supp.2d 667, 675 (E.D.Tex. 2001) (elements of a civil claim under Computer Fraud and Abuse Act include the "knowing 'transmission' of a 'program, information, code, or command' and the 'transmission' causes intentional 'damage without authorization'"); *Therapeutic Research Faculty v. NBTY, Inc.*, 488 F.Supp.2d 991, 998 (E.D.Cal. 2007) (focus of a claim under the Computer Data Access and Fraud Act is upon "unauthorized access"); FAC at ¶ 128 (breach of contract alleged as a result of "unauthorized" access); FAC at ¶¶ 133 & 143 (TN's alleged "unauthorized access to Oracle's computer systems" caused interference with prospective economic advantage);

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Finally, Oracle should be ordered to produce its "Change Assistant" software and related database. Change Assistant performs search and retrieval functions that will provide part of the data defendants continue to seek regarding the mapping of all downloadable software and support materials to the licensed products that are implicated by Oracle's claims in this case.

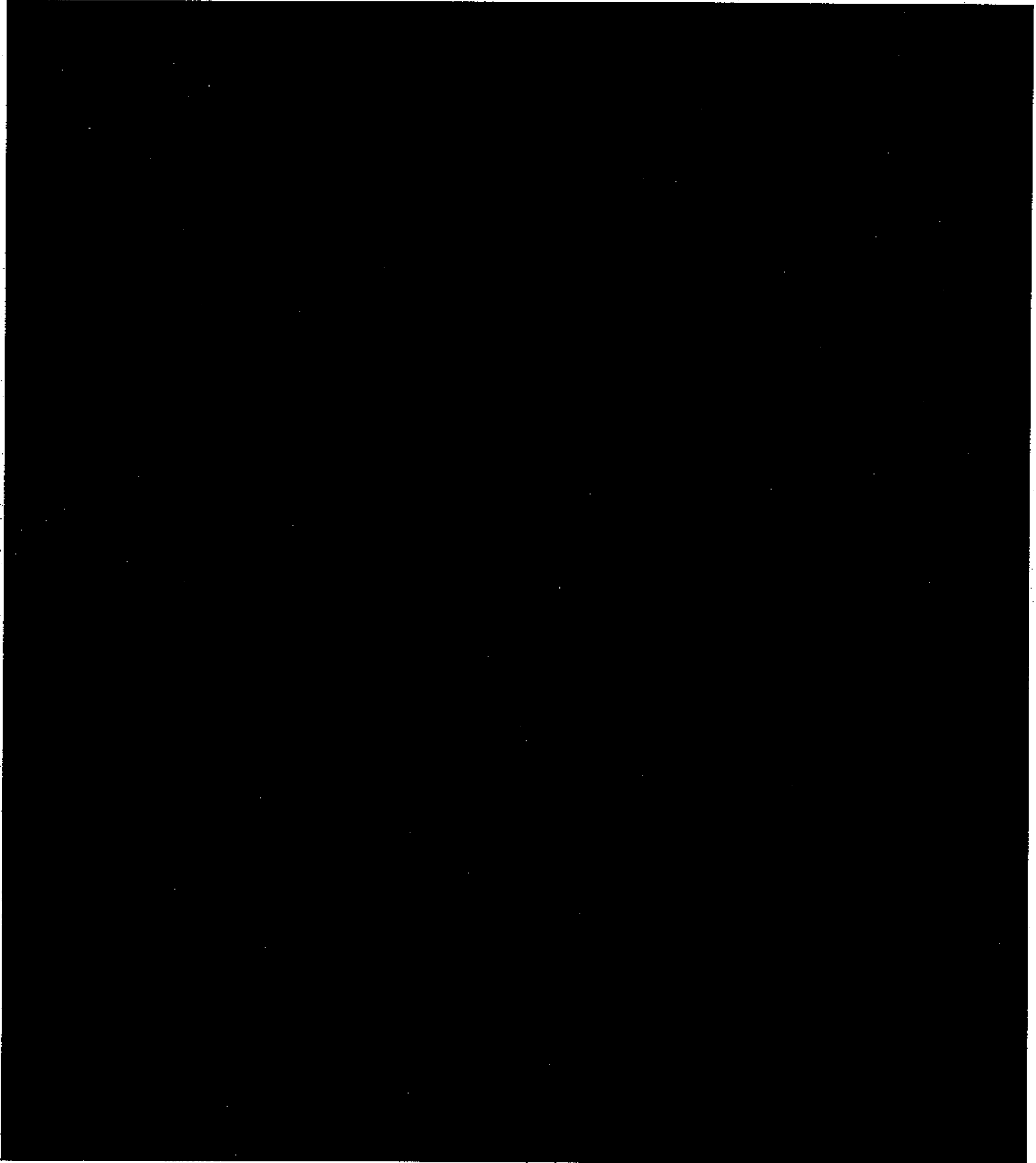
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eBay, Inc. v. Bidder's Edge, Inc., 100 F.Supp.2d 1058, 1069-70 (N.D.Cal. 2000) (trespass to chattels requires act without authorization).

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II. ARGUMENT

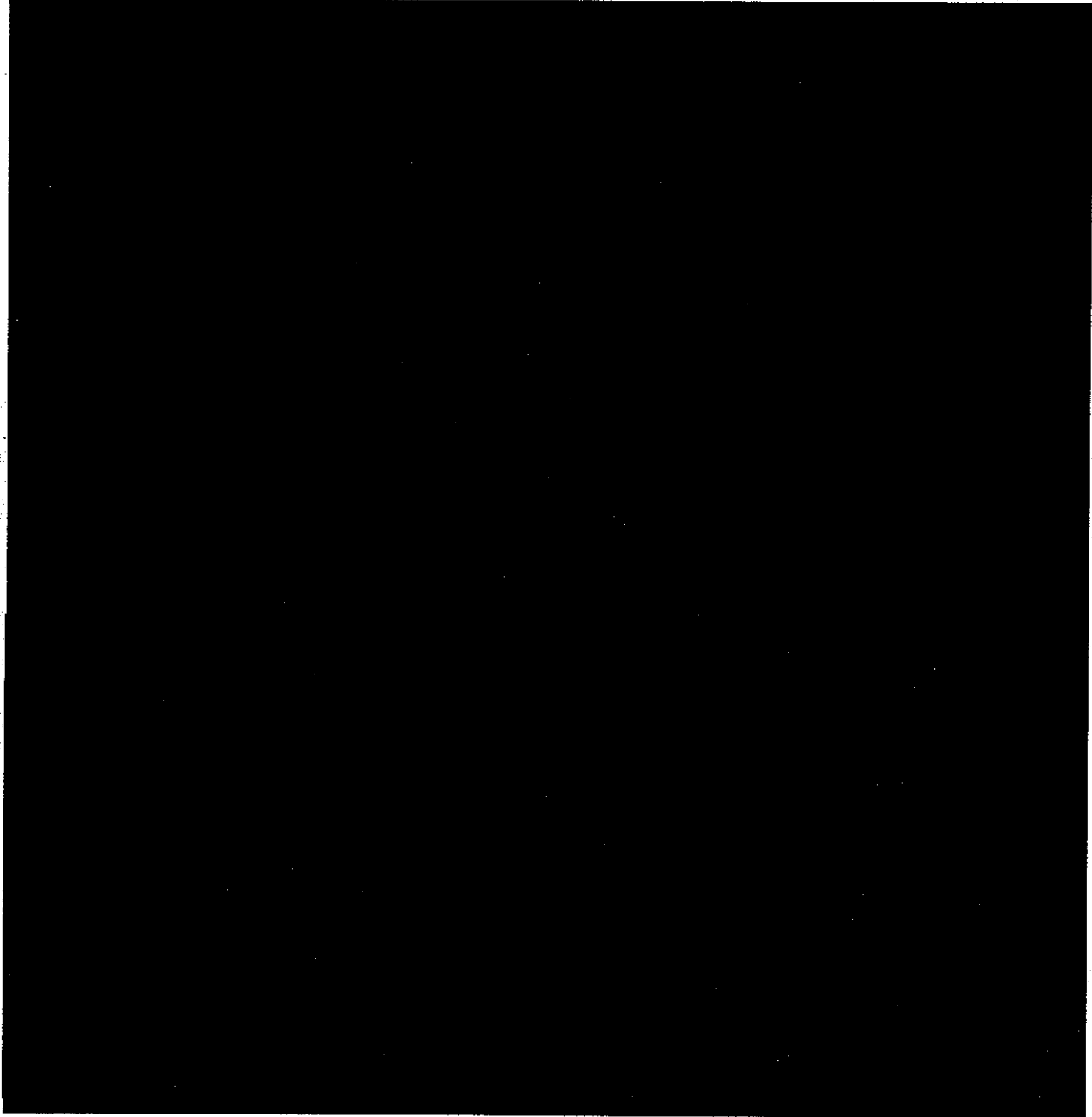


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⁷ See Letter, Alinder to Lanier, October 9, 2007, p. 2.

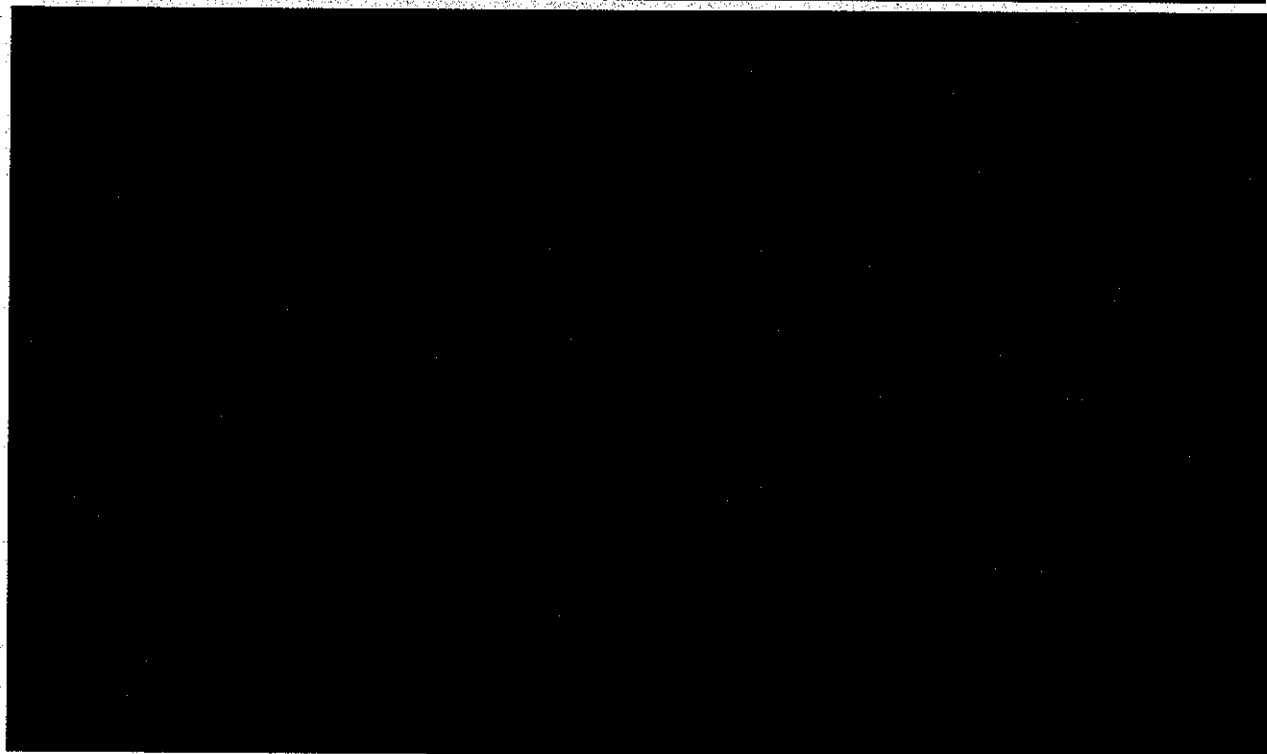
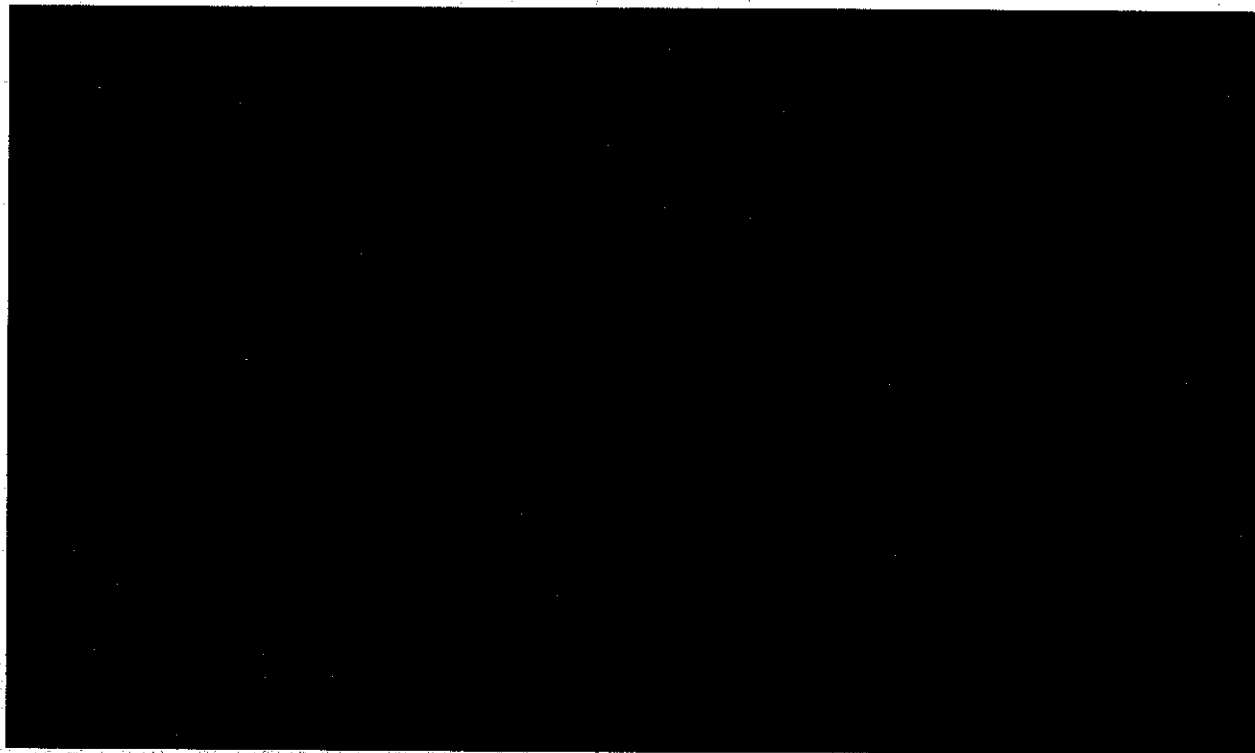
⁸ FAC at ¶ 71.

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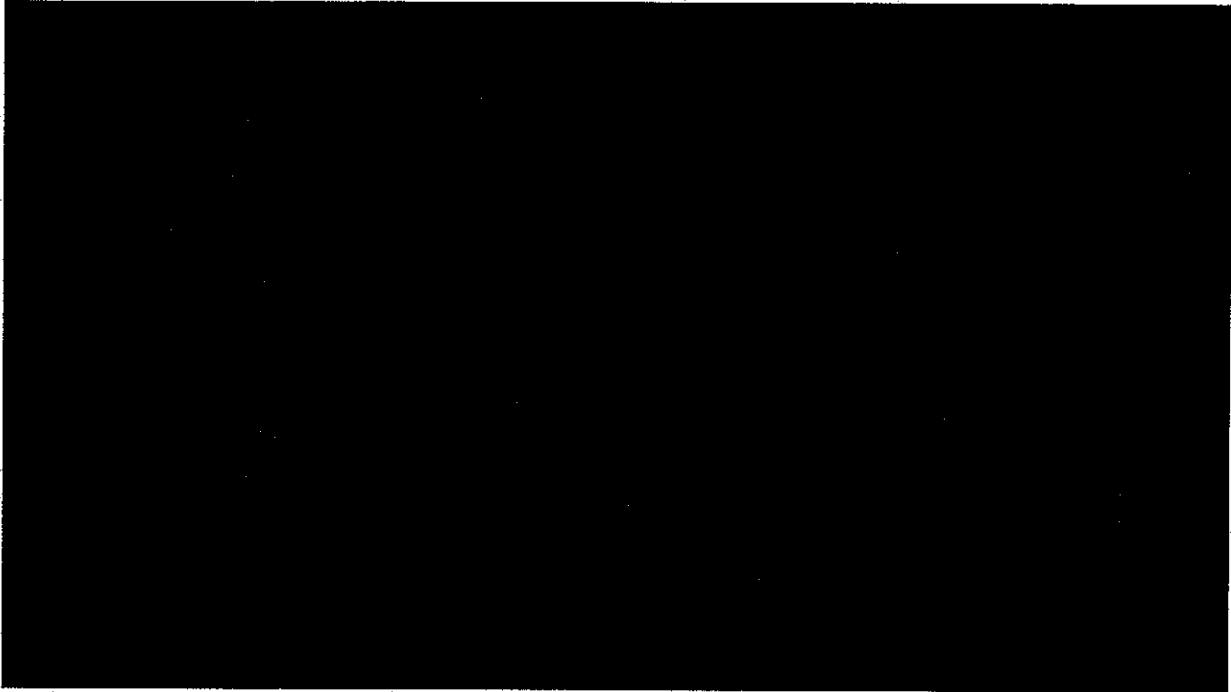
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D. Change Assistant and Associated Databases (Requests Nos. 52, 118)

Oracle's Change Assistant software is a separate computer program that Oracle's customers use to interface with the Customer Connection website. Customer Connection is one of the repositories of SSMs that Oracle claims defendants improperly accessed. The Change Assistant software is effectively a "search engine" designed to facilitate Oracle's customers downloading of SSMs from Customer Connection.

Oracle has provided defendants with very limited access to Customer Connection, which has included extremely limited and monitored use of the Change Assistant software. In Requests Nos. 52 and 118, defendants have requested that Oracle produce a copy of the Change Assistant software, its source code, and associated databases that Change Assistant uses to provide search retrieval and download functionality in conjunction with Customer Connection. Oracle has refused to produce this requested information.

Oracle's refusal to produce this discovery is inconsistent with its position that TN must produce the same information for TN's automated search and downloading tool, which is known

(continued...)

v. General Signal Corp., 1993 WL 373977, *5 (N.D.Cal. September 13, 1993) (citing *Youst v. Longo*, 43 Cal.3d 64, 71 n. 6, 233 Cal.Rptr. 294, 298 n. 6 (1987)).

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as "Titan." TN has produced all of the source code for Titan, which is software that has functionality that Oracle will no doubt compare to Change Assistant. Oracle continues to assert that its customers are able to determine through Change Assistant and Customer Connection which software and support materials their licenses permit them to download. Defendants must have access to the Change Assistant software, its source code and associated databases in order to respond to Oracle's claims that Change Assistant allows a customer to download only those items to which it is licensed. Moreover, the databases that Change Assistant uses to perform its search and retrieval functions will provide part of the data defendants continue to seek regarding the mapping of all downloadable software and support materials to all of the licensed products that are implicated by Oracle's claims in this case.

This issue demonstrates Oracle's unfair approach to discovery in this case. Oracle contends that TN must produce TN's software and source code for its automated search and download tool (Titan). Yet Oracle refuses to produce the same information for its own tool (Change Assistant), notwithstanding the fact that Oracle intends to use a comparison of the two to support its claims. And, Oracle contends that the parties' burdens are equal regarding the mapping of all downloadable software and support materials to all of the licensed products that are implicated by Oracle's claims in this case, yet Oracle continues to refuse to produce some of the most information-rich data (the databases used by Change Assistant) that would greatly assist that mapping exercise.

III. CONCLUSION

For the foregoing reasons, defendant's second motion to compel should be granted in its entirety.

Very truly yours,



Jason McDonnell

cc: Christopher B. Hockett, Esq. (via email)
Geoffrey Howard, Esq. (via email)
Zachary Alinder, Esq. (via email)
Holly House, Esq. (via email)
Bree Hann, Esq. (via email)